IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 34 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

INDIA GELATINE & CHEMICALS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 34 of 1988
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for the opinion of this Court in respect of assessment year 1980-81 :-

"1. Whether, on the facts and in the circumstances of the case, while computing the capital employed for granting deduction u/s. 80J of the Income-tax Act, 1961, the cost of uninstalled machineries is required to be reduced ?

2. Whether, on the facts and in the circumstances of the case, the assessee was entitled to weighted deduction u/s. 35B of the Income-tax Act, 1961 in respect of Rs.5,61,086/- being the export market credit interest ?"

2. We have heard Mr Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The learned counsel for the revenue fairly points out that the controversy raised in question No. 1 is squarely covered by the decision of the Apex Court in CIT vs. Alcock Ashdown and Co. Ltd., 224 ITR 353 wherein the Apex Court has laid down that the deduction is available the moment "the capital is employed in the undertaking". The Section does not state or specify that the asset should be actually used or utilized. The moment an asset is acquired or purchased for the purpose of the business, it is capital employed, though the asset as such is not actually utilized or used during the accounting year. In the chain of events, the earliest act or event is the purchase or acquisition of the asset. That by itself entitles the assessee to get the relief. The "employment" of the capital is done or over. The subsequent or later events, including the actual user of the asset, have nothing to do in the matter.

In view of the aforesaid principle laid down by the Apex Court which is applicable to Section 80J of the Act also, we are of the opinion that while computing the capital employed for granting deduction under Section 80J of the Act, the cost of uninstalled machineries is not required to be reduced. Accordingly our answer to the question is in the negative i.e. in favour of the assessee and against the revenue.

4. Coming to question No. 2, the learned counsel for the revenue relies on the decision of this Court in CIT vs. Jay Industries, (1992) 196 ITR 313 wherein this Court held that the expenditure incurred in India for supply of goods outside India would not qualify for weighted deduction as such expenditure is specifically excluded under sub-clause (iii) of section 35B(1)(b) of the Act.

Accordingly our answer to question No. 2 is in the negative i.e. in favour of the revenue and against the assessee.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-